In re Application of Howard C. Willauer
Application No. 10/621,827

REMARKS

The Pending Claims

Claims 21, 27, 28, 29, and 32 have been amended, and claims 31 and 33 have been canceled. Thus, claims 21-30 and 32-36 currently are pending in the application.

Summary of the Office Action

The Office Action rejects claims 21-26 and 30-36 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 1,871,249 (Waite) (hereinafter "the Waite '249 patent").

The Office Action also rejects claims 27-29 under 35 U.S.C. § 103(a) as allegedly unpatentable over the Waite '249 patent.

As best understood, the Office Action also rejects claims 21-36 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 2,563,259 (Miller) (hereinafter "the Miller '259 patent"), U.S. Patent No. 3,917,883 (Jepson) (hereinafter "the Jepson '883 patent"), or U.S. Patent No. 6,247,215 (Van Alboom et al.) (hereinafter "the Van Alboom '215 patent") in view of the Waite '249 patent, U.S. Patent No. 2,622,307 (Corgovan et al.) (hereinafter "the Corgovan '307 patent"), or U.S. Patent No. 3,999,940 (Freeman) (hereinafter "the Freeman '940 patent").

Discussion of the Section 102 Rejection

As noted above, the Office Action rejects claims 21-26 and 30-36 as allegedly anticipated by the Waite '249 patent. In particular, the Office Action asserts that, as the fibers in the rug disclosed in the Waite '249 patent are "stroked down," the fibers will be deflected revealing the allegedly different color exhibited by the lower portion of the fibers. Thus, the Office Action asserts that the "stroked down" rug disclosed in the '249 patent meets all of the elements recited in the aforementioned claims. Applicant respectfully traverses this rejection.

As amended, the claims now recite that the pattern formed by the first plurality or region of pile yarns and the second plurality or region of pile yarns define a durable pattern. Furthermore, as is clearly set forth in the specification, the term "durable" is utilized to refer to a pattern that is capable of withstanding at least one home laundering according to AATCC Standardized Home Laundry Test Conditions, Designation III (1995) without significant pattern loss. The specification further

provides that the term "durable" is used to differentiate the pattern from "nondurable" patterns produced, for example, by pile brushing, such as that disclosed in the Waite '249 patent (see, for example, the specification at page 4, lines 8-16). Thus, any pattern produced by the "stroked down" fibers of the rug disclosed in the Waite '249 patent cannot properly be considered a "durable" pattern, as that term is utilized in the present application. Indeed, the Office Action admits that the "stroked down" portion of the fiber in the rug of the Waite '249 patent would only remain "until further disturbed." The home laundering conditions specified in the aforementioned definition of "durable" would certainly amount to a disturbance sufficient to significantly destroy any pattern produced by the "stroked down" fibers of the rug disclosed in the Waite '249 patent.

Applicant also asserts that the pending claims cannot properly be considered obvious over the Waite '249 patent. In particular, there is no teaching within the Waite '249 patent which would have motivated one of ordinary skill in the art to substitute any durable patterning for the simple "stroking down" discussed therein. One of the express objects of the Waite '249 patent is to provide "a pile surface rug having a fur-like texture adapted to reflect the light in such a way as to present a beautiful sheen, and so intermeshed and intermingled as to conceal the presence of the separated tufts composing the pile of the rug" (the Waite '249 patent at col. 1, lines 6-12). Accordingly, one of ordinary skill in the art, having read the Waite '249 patent, would not have been motivated to utilize a more durable patterning of the fibers because such patterning may have been detrimental to the production of a "fur-like texture" and the concealment of the separated tufts from which the rug's pile was made.

In view of the foregoing, Applicant respectfully submits that the pending claims cannot properly be considered anticipated by or obvious over the Waite '249 patent. The section 102 and 103 rejections over the Waite '249 patent, therefore, should be withdrawn.

Discussion of the Section 103 Rejections

As noted above, the Office Action rejects, as best understood, the pending claims as allegedly unpatentable the Miller '259 patent, the Jepson '883 patent, or the Van Alboom '215 patent in view of the Waite '249 patent, the Corgovan '307

patent, or the Freeman '940 patent. Applicant respectfully traverses these rejections.

Generally, Applicant respectfully submits that the Office Action fails to identify any clear and particular teaching or suggestion which would have motivated one of ordinary skill in the art, at the time of invention, to modify the products or processes described in the cited references in such a way as to arrive at the invention defined by the pending claims. For example, Applicant submits that the Office Action fails to identify a clear and particular teaching or suggestion that would have motivated one of ordinary skill in the art to modify the flocked fabrics described in the Miller '259 patent, the Jepson '883 patent, or the Van Alboom '215 patent, for example, by using fibers having different colors at each of their ends. Applicant discusses this and other deficiencies of the cited references below.

With respect to the Miller '259 patent, Applicant submits that one of ordinary skill in the art would not have been motivated to modify the fabric disclosed therein in such a way as to arrive at the invention defined by the pending claims. The Miller '259 patent is directed to flocked fabrics, in which very short fibers are secured to a backing layer using an adhesive. Therefore, Applicant submits that one of ordinary skill in the art would not have been motivated to modify the fabrics disclosed therein, for example, by using fibers having different colors along their length because the Miller '259 patent does not disclose or suggest a way in which to control the orientation of the fibers as they are initially deposited onto the adhesive. Accordingly, there would be no way to control which end of the fibers contacted the adhesive, and any "pattern" produced using such fibers would merely be a random variation between the two colors (this random variation would be due to the fact that the fibers would be equally likely to assume either orientation). Moreover, because the process disclosed in the Miller '259 patent appears to rely on an "unset" adhesive to permit deflection of the fibers to their desired, permanent position, one of ordinary skill in the art would not have been motivated to modify the process disclosed in the Miller '259 patent with an intermediate dyeing step because such dyeing step would have interfered with the step of deflecting the fibers into the desired position before the adhesive had set.

Applicant also submits that one of ordinary skill in the art would not have been motivated to modify the Jepson '883 patent in the manner suggested in the Office Action. In particular, the Jepson '883 patent provides that the products described

therein are intended to have an appearance that is more resistant to "bruising," which is a term used to refer the variable color that can be produced by deflection of the fibers (see, for example, the Jepson '883 patent at col. 1, lines 36-40 and col. 2, lines 37-41). Therefore, one of ordinary skill in the art, having read the Jepson '883 patent, would not have been motivated to modify the products described therein, for example, by using fibers having different colors along their lengths because the deflection of such fibers would have accentuated the "bruising" that the Jepson '883 patent was intended to address.

With respect to the Van Alboom '215 patent, Applicant submits that one of ordinary skill in the art would not have been motivated to modify the reference in the manner suggested in the Office Action. The Van Alboom '215 patent is directed to flocked fabrics which have been treated to produce randomly arranged groupings of fibers across the surface of the fabric. After the fabric has been so treated, it is then printed using, for example, a screen printing process. In view of this printing step, Applicants submit that one of ordinary skill in the art would not have been motivated to modify the fabric disclosed in the Van Alboom '215 patent, for example, by using fibers having different colors along their lengths because the subsequent printing process would have changed the initial color difference along the length of such fibers.

As for the Waite '249 patent, Applicant submits, as noted above, that one of ordinary skill in the art would not have been motivated to modify the Waite '249 patent to substitute a durable patterning for the simple "stroking down" discussed therein. In particular, such patterning may have been detrimental to the production of a "fur-like texture" and the concealment of the separated tufts from which the rug's pile was made, which were the express objects of the Waite '249 patent.

With respect to the Cogovan '307 patent, Applicant submits that the reference cannot properly be combined as suggested in the Office Action. While the Cogovan '307 patent does note that the soil-resistant coating can affect the color of the pile, the Cogovan '307 patent teaches that such color variation may be objectionable and provides several means to address the problem. Thus, one of ordinary skill in the art, having read the Cogovan '307 patent, would not have been motivated to utilize the soil resistant coating disclosed therein as a means to produce a fiber or yarn having different colors along its length.

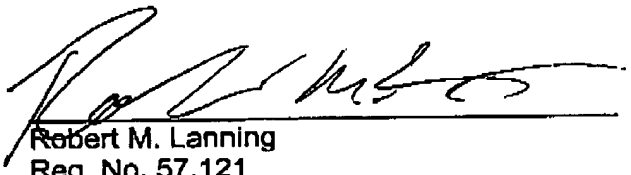
In re Application of Howard C. Willauer
Application No. 10/621,827

In view of the foregoing, Applicant respectfully submits that the Office cannot properly assert that the pending claims are *prima facie* obvious over the cited references. Therefore, the section 103 rejection over the aforementioned references should be withdrawn.

Conclusion

In view of the foregoing, the application is considered in proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone interview would expedite prosecution of the instant application, the Examiner is invited to call the undersigned.

Respectfully submitted,



Robert M. Lanning
Reg. No. 57,121
MILLIKEN & COMPANY, M-495
P.O. Box 1926
Spartanburg, SC 29304
Telephone: (864) 503-1537
Facsimile: (864) 503-1999

Date: November 22, 2005